

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 1175 OF 2022  
WITH  
INTERIM APPLICATION (ST.) NO. 28058 OF 2023

Director Handmade Paper Institute, Pune

...Petitioner

V/s.

Prashant Raghunath Kulkarni & Ors.

....Respondents

WITH  
WRIT PETITION NO. 1178 OF 2022  
WITH  
INTERIM APPLICATION (ST.) NO. 28057 OF 2023

Director Handmade Paper Institute, Pune

...Petitioner

V/s.

Subhash Nivrutti Pawar and Ors.

....Respondents

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**Mr. Kiran Bapat** Senior Advocate i/by. Mr. Gaurav Gawande, for the  
Petitioner.

**Mr. Nitin Kulkarni**, for the Respondents.

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**CORAM : SANDEEP V. MARNE, J.**

**Resd. On : 11 December 2023.**

**Pron. On : 19 December 2023.**

**JUDGMENT :**

1. Petitioner No.1-Institute is aggrieved by Judgement and Order dated 15 November 2021 passed by the Industrial Court, Pune in Revision Application (ULP) No. 218 of 2017 and 219 of 2017 whereby the Industrial Court has reversed the decision of the Labour Court to the extent of proportionality of punishment and has directed reinstatement of Respondents with 50% back wages.

2. Briefly stated, facts of the case are that are that Handmade Paper Institute is run and operated by the Maharashtra State Khadi and Industrial Board, which is established under the provisions of Bombay Khadi Village Industries Act, 1960. It is the case of the Respondents that the Petitioner No.1-Institute has Production Division, Research Division and Training Division. Respondent in Writ Petition No. 1175 of 2022 (Prashant Raghunath Kulkarni) joined the services of Petitioner No.1-Institute on the post of Junior Supervisor on 18 July 1994. His last drawn wages were Rs. 6250/- per month. Respondent in Writ Petition No. 1178 of 2022 (Subhash Nivrutti Pawar) joined the services of Petitioner No.1- Institute as Junior Supervisor with effect from 01 November 1988. His last drawn wages were Rs.7200/- per month.

3. It is the case of the Respondents that with effect from 1 June 2010, Petitioner No.1-Institute handed over Production Division to a Contractor and under the terms of the Contract, the Contractor was to retain the existing workers and staff of Petitioner No.1-Institute. The Respondents and other employees working in Production Division of the Institute were not happy about the said arrangement and it appears that various correspondence was made by the employees. It is the case of the Petitioner No.1-Institute that Respondents started agitations and refused to perform the allotted work on the demand that their service related grievances must be redressed. It is claimed by the Institute that on 2 May 2011 Respondents sat in front of the office of its Director. On 13 May 2011, show cause notices were issued to the Respondents as to why disciplinary action should not be initiated against them. By Orders dated 2 June 2011, services of Respondents came to be terminated. The Respondents approached the Labour Court by filing Complaint (ULP) No. 175 of 2011 and 174 of 2011 challenging the termination orders. Petitioners opposed the complaint by filing their written statement and showed willingness to prove the allegations in the termination orders. Petitioners led evidence in support of the allegations by examining Sanjeev Shantaram Shewale and Shri Bhanvarsingh Shankarsingh Gahalot. The Respondents examined themselves in support of their contentions. The Labour Court delivered Judgement and Order dated 28 March 2016 partly allowing the Complaints and directing the Petitioner to reinstate the Respondents with continuity and 25% backwages. The Labour Court's decision dated 28 March 2016 was challenged by Petitioners before the

Industrial Court by filing Revisions which came to be partly allowed by Judgement and Order dated 4 July 2016. The Industrial court confirmed the Order passed by the Labour Court to the extent of reinstatement. The direction for payment of backwages was set aside. Both, Petitioner as well as Respondents approached this Court challenging the decisions of the Industrial Court dated 4 July 2016. By its order dated 20 October 2016, this Court set aside the order of the Labour Court dated 28 March 2016 as well as of Industrial Court dated 4 July 2016 and remanded the complaints to the Labour Court for fresh decision. Accordingly, the Labour Court proceeded to decide the complaints filed by Respondents afresh. By its Judgement and Order dated 17 April 2017, the Labour Court dismissed both the complaints. Respondents approached the Industrial Court, Pune by filing Revision Application (ULP) No. 218 of 2017 and 219 of 2017 challenging the orders passed by the Labour Court on 17 April 2017. The Industrial Court has delivered Judgement and Orders dated 15 November 2021 by setting aside the decision of the Labour Court only to the extent of proportionality of penalty and has set aside the punishment of dismissal with further directions to reinstate the Respondents in service with 50% backwages. Petitioners are aggrieved by Judgement and Order dated 15 November 2021 passed by the Industrial Court and have filed the present petitions.

4.                   Appearing for petitioners, Mr. Bapat the learned senior advocate, would submit that the Industrial Court has erred in reversing the findings recorded by the Labour Court. That the scope of

interference in exercise of revisionary powers by the Industrial Court are in a narrow compass and that the Industrial Court does not sit as a court of appeal. That jurisdiction under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) can be exercised only when an Order is perverse or that the findings cannot justify conclusion of Labour Court. In support of his contentions, Mr. Bapat would rely upon the Judgments of this Court in *M. K. Bhuvaneshwaran V/s. M/s. Premier Tyres Ltd. And another* 2001 (2) Mh.L.J. 84 and *Mahila Griha Udyog Lijjat Papad Vs. Kamgar Congress and others* 1983 1 LLM 643.

5. Mr. Bapat would take me through the findings recorded by the Labour Court in support of his contention that the Labour Court has considered the entire evidence on record to hold that the misconduct alleged against the Respondents is successfully proved before the Labor Court by the Petitioners. Referring to the findings recorded by the Industrial Court, Mr. Bapat would submit that the Industrial Court has not disturbed the finding of guilt recorded by the Labour Court, but has erroneously proceeded to set aside the penalty of termination (dismissal), holding the same to be disproportionate. He would submit that the Industrial Court has erroneously assumed that the misconduct alleged against the Respondents was founded only on the incident of 2 May 2011. That the misconduct alleged against the Respondents was on account of series of his actions where they repeatedly refused to perform the allotted work. That the said aspect is

totally ignored by the Industrial Court while erroneously holding that the punishment of dismissal is disproportionate. He would submit that if an employee repeatedly refuses to perform duties and indulges in repeated agitations, the employer would be left with no other alternative but to terminate his services with a view to ensure smooth working of the Petitioner-Institute.

6. Mr. Bapat would further submit that the Petitioner-Institute is otherwise closed and is no more functional since the year 2014. That all other employees have opted for voluntary retirement in view of Settlement entered into with the Petitioners. That therefore the directions to reinstate Respondents in service can otherwise not be implemented. Lastly, Mr. Bapat would submit that even though Respondents are found guilty of serious misconduct, the Petitioners are willing to offer them the same benefit of voluntary retirement as are granted to the other employees as per the Memorandum of Settlement. However, according to Mr. Bapat, they can neither be reinstated, nor be paid any backwages. He would pray for setting aside the orders passed by the Industrial Court.

7. *Per contra* Mr. Kulkarni, the learned counsel appearing for the Respondents would oppose the petitions and support the Order passed by the Industrial Court. He would submit that the scope of Revision under Section 44 of the MRTU & PULP Act empowers the Revisionary Court to correct the error apparent on the face of the record in the Order of the Labour Court, or to set aside the findings if

found perverse. In support of his contention, he would rely upon the judgment of this Court in *Sadanand Ramesh Samsi Vs. Kirloskar Cummins Ltd. and others* 2003 (2) L.L.N. 484.

8. Mr. Kulkarni would further submit that the Respondents are given discriminatory treatment by selectively terminating their services when infact several employees of the Petitioner No.1-Institute were agitating against unlawful actions of the Management. He would invite my attention to the letter dated 25 April 2011 addressed by as many as nine employees by which they had declared intention of non-cooperation in the event of refusal to redress grievances of the employees. He would submit that though nine employees were agitating against the action of non-management by adopting non-cooperation movement, only two employees (Respondents) were selectively discriminated and terminated from services. Taking me through the evidence of the management witness, Mr. Kulkarni would show an admission that Shri. R.T. Kankal and Shri. Rajaram Ingale continued to remain in service despite taking part in agitations. Mr. Kulkarni would submit that imposition of extreme penalty of termination was not warranted for singular act of agitation by Respondents on 2 May 2011. This aspect has rightly been considered by the Industrial Court holding the punishment to be shockingly disproportionate. That Respondents have not committed any positive act of misconduct but have been erroneously implicated in false allegations solely with the object of ensuring their termination from services.

9. Mr. Kulkarni would contest the claim of Mr. Bapat that a closure has been effected in respect of Petitioner No.1-Institute. He would submit that the production activities of Petitioner No.1-Institute are still in progress and that therefore the Respondents can be reinstated. He would submit that tendering of resignations by other employees is inconsequential and would have no effect on the rights of the Respondents to be reinstated in service. He would pray for dismissal of the petitions.

10. Rival contention of the parties now fall for my consideration.

11. After remand of proceedings by this Court, the Labour Court has decided Complaints filed by both the Respondents and by its decision dated 17 April 2017 has proceeded to dismiss both the Complaints, holding that the termination of Respondents was not illegal. The Labour Court had framed specific Issue No.4 as to *“Whether Respondents proved alleged misconduct of complainant?”*. The issue was answered by the Labour Court in affirmative. The Industrial Court has not disturbed the finding of the Labour Court that the allegations of misconduct are proved by the Petitioner No.1-Institute before the Labour Court. The only ground on which the Industrial Court has interfered is the aspect of proportionality of penalty. The Industrial Court has found the termination (dismissal) to be shockingly disproportionate to the misconduct proved. It is by invoking the doctrine of proportionality that the termination order has

been set aside by the Industrial Court. The Respondent-employees have not challenged the decision of the Industrial Court. Therefore, I need not go into the issue of availability of evidence for proving misconduct or into the issue as to whether the finding of guilt is perverse or not. I proceed on a footing that the misconduct alleged against the Respondents has been proved by the employer before the Labour Court. The short issue that therefore arises for consideration is whether the findings recorded by the Industrial Court about proportionality of penalty can be sustained.

12. Both the sides have cited judgments in support of their respective contentions with regard to the scope and ambit of the Revisional Court to interfere in the findings recorded by the Labour Court which needs no reiteration. That Revisional Court does not sit in appeal over the findings recorded by the Labour Court. It can interfere only if the findings recorded by the Labour Court are either totally perverse or there is any glaring error apparent on the face of the record in the order of the Labour Court. Since there is no disagreement between the parties on this broad principle, it is not necessary to discuss the judgments of this Court in *M.K. Bhuvaneshwaran* (supra) and *Mahila Griha Udyog Lijjat Papad* (supra) relied upon by Petitioners and *Sadanand Ramesh Kochar* (supra) relied upon by the Respondents.

13. Perusal of the Orders terminating the services of Respondents would indicate that the employer has resorted to terminate the services since Respondents on the count of repeated

indulgence in agitations. The employer has considered the act of the Respondents sitting in front of the office of the Director to be gross misconduct. The employer has also recorded a finding that since the Respondents were working as Junior Supervisors, their action in refusing to work was also affecting the other labourers working under them. The termination order refers to action of the Respondents in merely signing the muster roll and not performing any work. The Petitioner No.1-Institute has therefore held the Respondents responsible for causing financial losses. As observed above, the entire misconduct alleged in the termination letters has been proved before the Labour Court and the said finding is not disturbed in any manner by the Industrial Court. The issue is whether the penalty of termination from service is warranted for misconduct alleged and proved against the Respondents.

14. One of the factors considered by the Industrial Court for holding the penalty to be disproportionate is the factum of continuation of employment of Shri. R. T. Kankal and Rajaram Ingale, who had also signed the protest letters. It clearly appears from the evidence as well as the findings recorded by the Industrial Court that only two employees viz. Respondents came to be terminated from service though other employees had also agitated against the policies adopted by the Petitioner No.1-Institute. It may be true that Petitioner-Employer considered the gravity of Respondents' misconduct to be more serious than the other employees. However, the fact remains that only the two Respondents were ultimately terminated from service

even though several other employees were also agitating in respect of the policies of the Petitioner No.1-Institute. In that view of the matter, though misconduct committed by Petitioners, in ordinary course, cannot be taken lightly, it cannot be said that the finding of disproportionality of penalty so perverse that this Court need to interfere in the same.

15. Thus, I have before me two Respondents whose misconduct is proved before the Labour Court and the finding of the Labour Court has attained finality on account of the same being upheld by the Industrial Court. Though the Industrial Court has held the punishment to be disproportionate, it has not suggested any other penalty nor has given opportunity to the employer to impose any other penalty in place of dismissal. This appears to be a glaring error on the part of the Industrial Court. If the penalty is found to be disproportionate, the employer must be given an opportunity to impose a lesser penalty. In appropriate cases and with the view to shorten the litigation, in appropriate cases the Courts/Tribunals can suggest less harsher penalty on the employee. In the present case, however, the end result of the order of the Industrial Court is such that Respondents are allowed to go scot-free, even though misconduct is ultimately proved against them.

16. In my view, it would not be appropriate to remain the proceedings before the employer to impose lesser penalty considering the twin factors of long passage of time and voluntary retirement opted

by majority of employees and possible dysfunctionality of Petitioner Institute. It has come on record that most of the employees of the Petitioner No.1-Institute have been granted retirement in pursuance of Memorandum of Settlement. Therefore, equities can be balanced if the termination orders are set aside only for the purpose of grant of benefit to the Respondents of the Memorandum of Settlement executed with the other employees.

17. Therefore, the order passed by the Industrial Court directing reinstatement with 50% backwages is unsustainable and is required to be set aside. Instead, the Respondents can be reinstated only for the purpose of grant of benefits under the Memorandum of Settlement dated 10 October 2019. The Petitioner need to compute the amounts payable to the Respondent-Employees by considering them to be in service as on 10 October 2019 and such amount can be paid to the respondents as full and final settlement.

18. I therefore proceed to pass the following order :

- (i) The Judgment and order dated 15 November 2021 passed by the Industrial Court in Complaint (ULP) No. 218 of 2017 and 219 of 2017 is modified by directing that Respondents shall be notionally reinstated in service for the limited purpose of offering them voluntary retirement under the Memorandum of Settlement dated 10 October 2019.

- (ii) Respondents shall stand voluntarily retired from services of Petitioner-Institute w.e.f. 10 October 2019;
- (iii) The amounts payable under the Memorandum of Settlement dated 10 October 2019 shall be paid by Petitioner-Institute to Respondents within 2 months.
- (iv) Petitioner-Institute shall pay to Respondents interest @ 6% p.a. on the amounts payable under Memorandum of Settlement w.e.f. 10 October 2019 till the date of actual payment.
- (v) Petitioner-Institute shall issue a communication to the Respondents about the exact amount of their entitlement under Memorandum of Settlement dated 10 October 2019 alongwith interest as directed above by 15 January 2024. The Respondents shall be entitled to withdraw the said amount so intimated by the Petitioner-Institute from this Court out of the deposit made by the Petitioner-Institute in this Court together with interest accrued thereon. In the event, the amount of entitlement of Respondents is higher than the deposited amount with interest, the balance amount shall be paid by the Petitioner-Institute to the Respondents directly by 31 January 2024. In the event, the amount of entitlement of Respondents is less than the deposited amount with interest, the balance amount shall be returned by the Registry to the Petitioner-Institute.

19. With above directions the Writ Petitions are disposed of without any order as to costs. Interim Applications pending therein also stand disposed of.

**SANDEEP V. MARNE, J.**

**Note :** Para-18(v) is added pursuant to speaking to minutes order dated 20 December 2023.

**NEETA  
SHAILESH  
SAWANT**

Digitally signed by  
NEETA SHAILESH  
SAWANT

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